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OFFICE OF PETITIONS

In re Application of
Ellis
Application No. 10/622,267
Filed: May 14, 2004
Attorney Docket No. 36070.010

ON PETITION

This decision concerns the May 14, 2004 petition which, in effect, requests withdrawal of a "Notice of Incomplete Nonprovisional Application" mailed on May 11, 2004 for the above-referenced application ("5/11/04 Notice").

The petition is **DISMISSED**.

The application was deposited on July 17, 2003. As indicated in the 5/11/04 Notice, the application was deposited without drawings and thus was not accorded a filing date. The petition then followed wherein Petitioner contends that 2 sheets of drawings containing Figures 1-9 were filed with the other application papers on May 14, 2004. It is noted that the specification deposited on July 17, 2003 describes drawings of Figures 1-9, but the USPTO file for this application does not include any drawing.

Where, as in here, there is a question regarding whether a document was received by the Office, the Office will rely on its official records, i.e., the contents of the pertinent application file, absent convincing evidence such as a properly completed postcard receipt suggesting that the Office has received and subsequently misplaced that document which is not contained in the Office file for this application.¹ A postcard receipt which itemizes and properly identifies the papers being filed **would** serve as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.² The petition does not enclose a copy of such a postcard to support the requested filing date.

¹ See MPEP section 513 (Rev. 2, May 2004).

² MPEP section 503 (Rev. 2, May 2004).

The petition is, on the other hand, accompanied by counsel's declaration, stating in essence that counsel had examined the entire application, which included 2 sheets of drawings containing Figures 1-9, before it was deposited in the envelope to be mailed. This evidence has been considered, but is not persuasive. The declaration contains the declarant's recall of routine events which occurred 10 months earlier and is not more persuasive than the record of what was filed as shown by the official file.

The Office further notes that an application including at least one method or process claim but deposited without any of the drawings described in the specification may nonetheless be entitled to a filing date.³ Unfortunately, the instant application does not include any method or process claim.

In view of the above, the application is not entitled to the requested filing date of July 17, 2003. The 5/11/04 Notice was properly mailed and will not be withdrawn. The petition is thus **dismissed**.

The application is hereby accorded a filing date of May 14, 2004, the day on which drawings of Figures 1-9 were filed.

Finally, the Office acknowledges receipt with the petition of the \$130 petition fee.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of May 14, 2004, using the 2 sheets of drawings (Figures 1-9) filed on that date.

Telephone inquiries should be directed to Petitions Attorney RC Tang at (703) 308-0763 (before September 15, 2004), or to the undersigned at (703) 306-5683 (before September 27, 2004) or (571) 272-3203 (after September 27, 2004).



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